
Judiciary Committee

HB 1553

Title: An act relating to claims for damages against the state and local governmental entities.

Brief Description: Addressing claims for damages against the state and local governmental entities.

Sponsors: Representatives Takko, Goodman, Williams, Hurst, Pedersen and Campbell.

Brief Summary of Bill

- Amends procedures applicable to claims filed against local governments and the state, including requiring the claim to be presented on a standard tort claim form;
- Provides that a claim may not be dismissed for noncompliance with the procedural requirements absent bad faith by the claimant and actual prejudice to the local governmental entity or the state.
- Provides that a written, good faith request to mediate a claim before filing the cause of action tolls the statute of limitations for one year.

Hearing Date: 2/2/09

Staff: Trudes Tango (786-7384)

Background:

A tort claim against either the state or a local government may not be filed in court until the claimant complies with certain notice requirements established in statute, called the "claim filing statute." One of the purposes of the claim filing statute is to allow local governments time to investigate, evaluate, and settle claims prior to the instigation of a civil proceeding.

A tort claim against the state must be presented to and filed with the Risk Management Division of the Office of Financial Management. A tort claim against a local governmental entity must be presented to an agent designated by the local governmental entity to receive the claims.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The claim must accurately describe the injury or damages, the conduct or circumstances that brought about the injury or damage, the names of all persons involved, and the amount of damages claimed. A claimant may not commence a civil tort action against the state, or against a local governmental entity, until 60 days after the claim is filed. The statute of limitations for the claim is tolled during this 60-day period.

The claimant is required to verify, present, and file the claim. However, if the claimant is incapacitated, a minor, or is a nonresident of the state who is absent when the claim is required to be filed, the claim may be verified, presented, and filed by any relative, attorney, or agent representing the claimant.

Substantial compliance with respect to the contents of the claim is sufficient. In fact, the claim filing statute for the state specifically provides that with respect to the content, the statute should be liberally construed so that substantial compliance is sufficient. However, the courts have generally required strict compliance with the procedural requirements of the claim filing statute and failure to strictly comply leads to dismissal of the action.

Procedures for filing claims for injuries resulting from health care are governed under a separate chapter of the Revised Code of Washington. A provision in that chapter tolls the statute of limitations for the action for one year if the claimant has made a written, good faith request for mediation prior to filing the action in court.

Summary of Bill:

Changes are made to the claim filing statutes applicable to local governmental entities and the state.

Presentation of the Claim

For claims against local governments, presentation of a claim is accomplished by delivery to the agent or other person authorized to accept delivery at the agent's office, or by registered mail, or by certified mail return with receipt requested. For claims against the state, presentation of the claim is accomplished by service upon the agent or by registered mail.

Claims against local governments and the state must be presented on a standard tort claim form. The form must be maintained by the Office of Financial Management and put on its website. Local governments and the state must make the standard form available with instructions on how the form is to be presented and the name, address, and business hours of the agent authorized to receive the claim.

The claim form must not list the claimant's social security number or birth date and must not require information that is not specified in the statute. For claims against local governments if the claim form fails to seek the information specified in the statute or incorrectly lists the agent to whom the claim is to be filed, the local government is deemed to have waived any defense related to the failure to provide that specific information or to file with the proper agent. The claimant does not have to provide his or her actual residence six months prior to the time the claim arose, but must state his or her actual residence at the time the claim arose.

Persons Who can Sign, Verify, and Present the Claim

The claim must be signed and verified either by the claimant, by the claimant's attorney-in-fact under a power of attorney, or by an attorney licensed to practice in Washington.

Compliance with the Statutes

The statutes are to be liberally construed with respect to the contents of the claim and the procedural requirements of the statute. A claim must not be dismissed for noncompliance absent bad faith by the claimant and actual prejudice to the local governmental entity or the state.

Statute of Limitations

For claims against a local government or the state, an action commenced within five business days after the 60 calendar day period has elapsed will be considered timely. In addition, making a written, good faith request for mediation before filing the cause of action will toll the applicable statute of limitations for that action for one year.

Other

For claims against a local government or the state, the amount of damages stated on the claim form is not admissible at trial.

Language is added to clarify that these claim filing statutes do not apply to claims based on injuries from health care. The procedures established under the medical malpractice statutes apply to those claims.

Appropriation: None.

Fiscal Note: Requested on January 28, 2009.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.